

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JEFFREY E. SIMPSON,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 06-15-B-W
)	
BERT BEVERLY, et al.,)	
)	
Defendants.)	

Recommended Decision on Plaintiff's Motion to Dismiss Correctional Defendants

Jeffrey Simpson, a pro se plaintiff in this 42 U.S.C. § 1983 prisoner lawsuit, has filed a motion for voluntary dismissal of three of his defendants: The Commissioner of the Maine Department of Corrections, the Warden of the Maine State Prison, and Robert Costigan. (Docket No. 71.) These three defendants have correctional responsibilities at the jail; the remaining defendants are sued due to their involvement in the provision of health care. Also pending is a motion for summary judgment by the correctional defendants (Docket No. 41), the same defendants Simpson seeks to dismiss all of his claims against.

Simpson brings his motion pursuant to Federal Rule of Civil Procedure 41(a)(2) which provides for dismissal by order of the court:

Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

Fed. R. Civ. P. 41(a)(2).

The defendants have responded to the motion to dismiss by indicating that they do not object to the court's granting of the motion so long as the dismissal be with prejudice. In view of the fact that these defendants have a ripe motion for summary judgment pending to which Simpson has not responded and in view of the fact that Simpson has not filed a reply to the defendants response indicating that he opposes their request that the dismissal be with prejudice, I recommend that the Court grant the plaintiff's motion to dismiss and dismiss the complaint as to Costigan, the Warden, and the Commissioner with prejudice. If the court accepts this recommendation the motion for summary judgment filed by these three defendants would be moot.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

/s/ Margaret J. Kravchuk
U.S. Magistrate Judge

Dated September 14, 2007.